

DISTRICT OF MAINE

Civil No. 02-73-P-H

¹ I address this post-judgment motion pursuant to 28 U.S.C. § 636(b)(3) which provides that a “magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.”

qualifies as “a lien upon the property of the judgment debtor” for purposes of Rule 62(f). *See* Memorandum in Support of Request for Stay Pursuant to Rule 62(f) (Docket No. 121). *Cote* does indeed stand for that proposition; however, as plaintiff Albert Johnson suggests, subsequent developments (in particular a 2002 First Circuit decision) invite reexamination of the question. *See* Plaintiff’s (1) Response to Defendant’s Motion for Stay of Judgment and (2) Request for Supersedeas Bond (“Response”) (Docket No. 122); *Acevedo-García v. Vera-Monroig*, 296 F.3d 13 (1st Cir. 2002).

In *Cote*, Judge Kravchuk observed, “The cases interpreting Fed. R. Civ. P. 62(d) and (f) turn upon whether the attested copy of the judgment creates the original lien or whether some other document or process is required.” *Cote*, 2000 WL 1224757, at *1. She found that Maine’s statutory scheme operated “to create the functional equivalent of the judgment itself being a lien upon the property of the debtor[.]” *Id.* at *1, n.2.² She distinguished Maine’s judgment-related statutes from those of Connecticut (with respect to which judgments were held not to constitute liens for purposes of Fed. R. Civ. P. 62(f)) and analogized them to those of Illinois (with respect to which judgments were held to constitute liens for purposes of that rule). *See id.* (discussing *Marandino v. D’Elia*, 151 F.R.D. 227 (D. Conn. 1993), and *Smith v. Village of Maywood*, No. 84 2269, 1991 WL 277629 (N.D. Ill. Dec. 20, 1991)).

The *Maywood* court had construed Rule 62(f) to apply if “the judgment would result in a lien on the property of the judgment debtor[.]” *Maywood*, 1991 WL 277629, at *1. The court observed

² In Maine, any non-exempt interest in real or personal property may be attached, following entry of judgment in a civil action and prior to the issuance of a writ of execution upon the judgment, “by the plaintiff by the filing in the registry of deeds for the county in which the property is located, with respect to real property, or in the office of the Secretary of State, with respect to property of a type a security interest in which may be perfected by a filing in such office under Title 11, Article 9-A, of an attested copy of the court order awarding judgment.” 14 M.R.S.A. § 4151. This filing “constitutes perfection of the attachment.” *Id.* A lien is created by “[t]he filing of an execution duly issued by any court of this State or an attested copy thereof” with the registry of deeds or the office of the Secretary of State; however, the effective date of any such lien relates back to the date of perfection of any previous attachment. *Id.* §§ 4651-A(1), (2) & (6).

that pursuant to Illinois law, “the judgment entered in favor of Smith would be a lien upon Maywood’s real estate once Smith files a certified copy of the judgment in the office of the Recorder of Cook County.” *Id.*

Subsequently, a federal district court in California rejected the reasoning of *Maywood*, framing the Rule 62(f) inquiry as whether, pursuant to state law, the issuance of a judgment results in creation of a lien without need of further action on the part of the judgment creditor – rather than (as the *Maywood* court and Judge Kravchuk in *Cote* had conceived it) whether the judgment itself forms the basis for the lien. *See Aldasoro v. Kennerson*, 915 F. Supp. 188, 190-91 (S.D. Cal. 1995) (holding that because in California “it is the responsibility of the *judgment creditor* to obtain either an abstract of judgment or a copy of the judgment itself, and take that document to the County Recorder to be recorded,” and no lien on real property is created until those steps are taken, per California law a judgment is not a lien for purposes of Rule 62(f)) (emphasis in original).

The First Circuit in *Acevedo-García*, issued subsequent to Judge Kravchuk’s opinion in *Cote*, cited *Aldasoro* with favor, observing: “Since, under Puerto Rico law, a judgment becomes a lien upon property only after the judgment creditor applies to the court and the court issues a writ of attachment, . . . Rule 62(f) does not appear to apply.” *Acevedo-García*, 296 F.3d at 17-18 & n.5.

Inasmuch as Maine law, like California law, requires a judgment creditor to take steps post-judgment to create a lien on a judgment debtor’s real or personal property, a judgment is not a lien under Maine law for purposes of Rule 62(f). SPM accordingly fails to demonstrate entitlement to a stay pursuant to that rule, as a result of which I recommend that the Motion be **DENIED**.³

NOTICE

³ Given my recommendation, I do not reach Johnson’s request for a supersedeas bond, which evidently would be triggered if the court were to find SPM entitled to a stay pursuant to Rule 62(f). *See* Response at 5-6.

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(3) for which de novo review by the district court is sought, together with a supporting memorandum and request for oral argument before the district judge, if any is sought, within ten (10) days after being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated this 4th day of August, 2003.

David M. Cohen
United States Magistrate Judge

Plaintiff

ALBERT JOHNSON

represented by **ERIC UHL**
MOON, MOSS, MCGILL, HAYES &
SHAPIRO, P.A.
10 FREE STREET
P. O. BOX 7250
PORTLAND, ME 04112-7250
775-6001

V.

Defendant

SPENCER PRESS OF MAINE INC

represented by **U. CHARLES REMMEL, II**
KELLY, REMMEL & ZIMMERMAN
53 EXCHANGE STREET
P.O. BOX 597
PORTLAND, ME 04112
207-775-1020

GRAYDON STEVENS
KELLY, REMMEL & ZIMMERMAN

53 EXCHANGE STREET
P.O. BOX 597
PORTLAND, ME 04112
207-775-1020